

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-06-SE-199
Hawking Technologies, Inc.	)	NAL/Acct. No. 200732100022
Irvine, California	)	FRN # 0012065009

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 28, 2007****Released: April 2, 2007**

By the Commission:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Hawking Technologies, Inc. (“Hawking”) apparently liable for a forfeiture in the amount of fifty thousand dollars (\$50,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Sections 2.803(a) and 15.204(d) of the Commission’s Rules (“Rules”).<sup>2</sup> The apparent violations involve marketing external radio frequency power amplifiers in a manner that was inconsistent with the terms of Hawking’s equipment authorization and the requirements of Section 15.204(d) of the Rules.

**II. BACKGROUND**

2. Section 302 of the Act authorizes the Commission to make reasonable regulations, consistent with the public interest, governing the interference potential of equipment that emits radio frequency energy, and prohibits, *inter alia*, the offering for sale of radio frequency devices to the extent such activity does not comply with those regulations. The purpose of this section is to ensure that radio transmitters and other electronic devices meet certain standards to control interference before they reach the market. The Commission carries out its responsibilities under Section 302 in two ways. First, the Commission establishes technical regulations for transmitters and other equipment to minimize their potential for causing interference to radio services. Second, the Commission administers an equipment authorization program to ensure that equipment reaching the market complies with the technical requirements.<sup>3</sup> The equipment authorization program requires that radio frequency equipment be tested for compliance with applicable technical requirements in accordance with one of three authorization procedures – certification, Declaration of Conformity, or verification<sup>4</sup> – prior to the initiation of

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<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. §§ 2.803(a) and 15.204(d).

<sup>3</sup> 47 C.F.R. Part 2, Subpart J.

<sup>4</sup> Certification is an equipment authorization issued by the Commission or one of its designated Telecommunications Certification Bodies, based on representations and test data submitted by the applicant. 47 C.F.R. § 2.907(a). A Declaration of Conformity is a procedure where the responsible party – the manufacturer, or in the case of imported equipment, the importer – makes measurements or takes other necessary steps to ensure that the equipment complies with the appropriate technical standards. 47 C.F.R. § 2.906(a). Under the (continued ...)

marketing. “Marketing” includes the sale or lease, offer for sale or lease (including advertising for sale or lease), importing, shipping, and/or distribution for the purpose of selling or leasing or offering for sale or lease.<sup>5</sup>

3. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(1) of the Commission’s implementing regulations provides that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device<sup>6</sup> unless ... [i]n the case of a device that is subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter.

In addition, Section 15.204(a) of the Rules provides that:

Except as otherwise described in paragraphs (b) and (d) of this section, no person shall use, manufacture, sell or lease, offer for sale or lease (including advertising for sale or lease), or import, ship or distribute for purpose of selling or leasing, any external radio frequency power amplifier or amplifier kit intended for use with a part 15 intentional radiator.<sup>7</sup>

Section 15.204(d) of the Rules provides that:

Except as described in this paragraph, an external radio frequency power amplifier or amplifier kit shall be marketed only with the system configuration with which it was approved and not as a separate product.

(1) An external radio frequency power amplifier may be marketed for individual sale provided it is intended for use in conjunction with a transmitter that operates in the 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz bands pursuant to §15.247 of this part or a transmitter that operates in the 5.725–5.825 GHz band pursuant to §15.407 of this part. The amplifier must be of a design such that it can only be connected as part of a

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Declaration of Conformity procedure, the measurements must be made by an FCC-accredited laboratory. 47 C.F.R. § 2.948(a)(3). In addition, a copy of the Declaration of Conformity listing the party responsible for compliance must be included in the literature supplied with the product. 47 C.F.R. § 2.1077. Verification is also a procedure where the manufacturer, or in the case of imported equipment, the importer, makes measurements or takes the necessary steps to ensure that the equipment complies with the appropriate technical standards. However, unlike the Declaration of Conformity procedure, it does not require that an accredited laboratory make the measurements or that a Declaration of Conformity be supplied with the equipment. 47 C.F.R. § 2.902(a).

<sup>5</sup> 47 C.F.R. § 2.803(e)(4).

<sup>6</sup> 47 C.F.R. § 2.801 defines a radio frequency device as “any device which in its operation is capable of emitting radio frequency energy by radiation, conduction, or other means.”

<sup>7</sup> 47 C.F.R. § 15.3(o) defines an intentional radiator as “[a] device that intentionally generates radio frequency energy by radiation or induction.”

system in which it has been previously authorized. (The use of a non-standard connector or a form of electronic system identification is acceptable.) The output power of such an amplifier must not exceed the maximum permitted output power of its associated transmitter.

(2) The outside packaging and user manual for external radio frequency power amplifiers sold in accordance with paragraph (d)(1) of this section must include notification that the amplifier can be used only in a system which it has obtained authorization. Such a notice must identify the authorized system by FCC Identifier.<sup>8</sup>

Thus, under Section 15.204(d), an external radio frequency power amplifier may only be marketed for individual sale for use with a transmission system or systems in which it has previously been authorized and must be of a design such that it can only be connected as part of a system in which it has been previously authorized (e.g., through use of a non-standard or “unique” connector). Further, the packaging and user manual must include notification that the amplifier can only be used in a system in which it has obtained authorization and identify such system by FCC Identifier. In adopting these requirements, the Commission stated that “combining RF amplifiers with systems that they have not been tested and shown to be in compliance with should not be permitted due to the high risk of potential interference.”<sup>9</sup>

4. In December 2004, the Commission’s Enforcement Bureau (“Bureau”) received complaints alleging that Hawking was illegally marketing the Hawking Model HSB1 external radio frequency power amplifier (“HSB1 amplifier”) for individual sale. The Bureau’s Spectrum Enforcement Division investigated these complaints.

5. External radio frequency power amplifiers such as the HSB1 amplifier are used to boost the power of radio transmitters such as wireless access points.<sup>10</sup> The equipment certification issued for the HSB1 amplifier under FCC ID # SOYHSB1 explicitly stated that the HSB1 amplifier may be used only with wireless access points authorized under equipment certification FCC ID # NDD9572030410. As part of its investigation, the Bureau purchased a unit of the HSB1 amplifier. The purchased unit was not sold with a wireless access point and, thus, was marketed for individual sale. As noted above, under Section 15.204(d) of the Rules, an external radio frequency power amplifier may only be marketed for individual sale for use with a transmission system or systems in which it has previously been authorized.<sup>11</sup> The Bureau’s investigation disclosed, however, that Hawking was marketing the HSB1 amplifier as a device that could be connected to any other wireless device, including those with which it is not authorized to be used. For example, the “Hi-Gain 24 Series 2.4 GHz Wireless Range Extending Antennas Product Information Brochure” packaged with the HSB1 amplifier stated that “the HSB1 ... attaches to any wireless device (Access Points, Routers, Bridges, Network Adaptors, etc.) with a removable antenna. The HSB1 comes with connector adaptors compatible with all major wireless

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<sup>8</sup> 47 C.F.R. § 15.204(d).

<sup>9</sup> *Modification of Parts 2 and 15 of the Commission’s Rules for Unlicensed Devices and Equipment Approval*, Report and Order, ET Docket No. 03-201, 19 FCC Rcd 13539, 13545 (2004).

<sup>10</sup> The term “wireless access point” is not defined in the Rules. However, we take official notice that a wireless access point is a transmitter/receiver whose most common use is to connect wireless devices to the internet.

<sup>11</sup> 47 C.F.R. § 15.204(d).

brands.”<sup>12</sup> Additionally, Hawking’s internet site included statements that the HSB1 amplifier “works with all major 80211b and g wireless brands” and “is the ONLY range-boosting product on the market with support for all major wireless brands and networks,” and that “connector adaptors are available for multiple brand support.”<sup>13</sup> In response to a letter of inquiry (“LOI”),<sup>14</sup> Hawking stated that it had imported and distributed in the United States 7,520 units of the HSB1 amplifier.<sup>15</sup>

6. On the basis of its investigation, the Bureau issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Hawking on June 22, 2005, proposing a \$22,000 forfeiture<sup>16</sup> for marketing external radio frequency power amplifiers in a manner that was inconsistent with the terms of its equipment authorization and the rules in apparent willful and repeated violation of Section 302(b) of the Act and Sections 2.803(a) and 15.204 of the Rules.<sup>17</sup> In its response to the NAL, Hawking did not dispute the violations but sought reduction or cancellation of the proposed forfeiture amount.<sup>18</sup> On April 17, 2006, the Bureau released a *Forfeiture Order* affirming the violations but reducing the forfeiture amount to \$17,600 on basis of Hawking’s history of overall compliance.<sup>19</sup>

7. The Bureau subsequently received a new complaint alleging that Hawking was illegally marketing another external radio frequency power amplifier model – the Hawking Model HSB2 amplifier (“HSB2 amplifier”) – for individual sale. An equipment certification issued to Hawking under FCC ID # SOYHSB2AP authorizes the HSB2 amplifier to be used in a digital transmission system with a wireless access point that is identified in the certification application as the Hawking Model HWBA54G (“HWBA54G wireless access point”). Another equipment certification issued to Hawking under FCC ID # SOYHSB1-PCI authorizes the HSB1 amplifier to be used in a digital transmission system with a PCI card<sup>20</sup> identified in the certification application as the Hawking Model HWP54G (“HWP54G PCI card”).

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<sup>12</sup> *Hawking Technologies, Inc.*, 20 FCC Rcd 10852, 10853 (Enf. Bur., Spectrum Enf. Div., 2005), *forfeiture ordered*, 21 FCC Rcd 3966 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Hawking*”).

<sup>13</sup> *Hawking*, 20 FCC Rcd at 10853.

<sup>14</sup> Letter from Kathryn Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Hawking Technologies, Inc. (December 30, 2004).

<sup>15</sup> See Letter from Frank Lin, Chief Executive Officer, Hawking Technologies, Inc. to Thomas Fitz-Gibbon, Attorney, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (January 17, 2005) at 2-3.

<sup>16</sup> The \$22,000 forfeiture amount proposed by the NAL included an upward adjustment of \$15,000 on the basis of Hawking’s substantial economic gain from the marketing of 7,520 units.

<sup>17</sup> *Hawking*, 20 FCC Rcd 10852.

<sup>18</sup> *Hawking*, 21 FCC Rcd at 3969.

<sup>19</sup> *Hawking*, 21 FCC Rcd at 3971. Commission records indicate that Hawking paid the \$17,600 forfeiture in full on May 25, 2006.

<sup>20</sup> The term “PCI card” is not defined in the Rules. However, we take official notice that a PCI card is a transmitter/receiver which is installed in a computer and whose use is to connect the computer to the internet.

8. As part of its investigation of the new complaint, the Bureau purchased a unit of the HSB2 amplifier.<sup>21</sup> The HSB2 amplifier was packaged with an antenna and reverse SMA connector (as its unique connector) but the package did not include a wireless access point or PCI card. An insert packaged with the HSB2 amplifier states that the HSB1 and HSB2 amplifiers “are identical in function and form.” In addition, the user’s manual packaged with the HSB2 amplifier contains instructions for connecting the HSB2 amplifier to the HWP54G PCI card, which is authorized to be used with the HSB1 amplifier.<sup>22</sup> Further, the “Hi-Gain 24 Series 2.4 GHz Wireless Range Extending Antennas Product Information Brochure” (“product brochure”) packaged with the HSB2 amplifier states that the HSB1 amplifier “attaches to any wireless device.”<sup>23</sup> The product brochure also provides instructions on how to use Hawking’s “jumper cables” (connector converters) to attach the HSB1 amplifier to any wireless devices.<sup>24</sup>

9. As noted above, Section 15.204(d)(2) of the Rules provides that the outside packaging and user manual for external radio frequency power amplifiers marketed for individual sale in accordance with Section 15.204(d)(1) must include notification that the amplifier “can be used only in a system in which it has obtained authorization” and that such notification must identify the authorized system by FCC Identifier. The user’s manual packaged with the HSB2 amplifier does not contain any such notification. In addition, the outside packaging of the HSB2 amplifier does not include clear notification that the amplifier can be used only in a system in which it has obtained authorization and identify the authorized system by FCC Identifier. Rather, one side of the box in which the HSB2 amplifier is packaged contains the following statement: “The HSB2 is certified by the FCC to work with various wireless devices as a system. Please check the Hawking Technologies website for the latest certifications. FCC ID # SOYHSB2AP.” The back of the box states “[a]lso works with other certified wireless network adapters and devices with removable antennas.”

10. The Enforcement Bureau conducted internet research on the HSB2 amplifier between May 1 and June 21, 2006. The Bureau’s research indicated that Hawking was advertising the HSB2 amplifier on its website, [www.hawkingtech.com](http://www.hawkingtech.com). The advertising contained a list of items packaged with the HSB2 amplifier, which did not include a wireless access point or PCI card. Thus, Hawking was marketing the HSB2 amplifier for individual sale. The advertising also contained an illustration of the HSB2 amplifier being used in conjunction with the HWP54G PCI card but did not indicate which wireless devices are authorized to be used with the HSB2 amplifier.

11. Moreover, the Bureau’s internet research indicated that Hawking was advertising the Hawking Model HACST “TNC to RP Connector Adapter” (“HACST connector adapter”) and the Hawking Model HACSA “MCX to SMA Jumper Cable” (“HACSA jumper cable”) on its website. The advertising stated that the HACST connector adapter “makes any wireless networking device with TNC antenna connectors compatible with Hawking’s entire line of Hi-Gain WiFi Range Extending Products”; “converts any Wireless device with TNC connectors to SMA connectors for use with Hawking’s Hi-Gain

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<sup>21</sup> The housing of the purchased device indicates the model number HSB1. However, we refer to the purchased device as an HSB2 because both its outside packaging and the user’s manual indicate that the model number is HSB2. Additionally, Hawking asserts in its LOI response that the manufacturer used the wrong model number on the housing.

<sup>22</sup> User’s manual at 6-7

<sup>23</sup> Product brochure at 4.

<sup>24</sup> Product brochure at 7-8.

Range Extending Antennas and Boosters”; and is “compatible with most Linksys and Cisco devices.” The advertising also stated that the HACSA jumper cable “makes any Apple Airport with an external antenna connector compatible with Hawking’s entire line of Hi-Gain WiFi Range Extending Products.” The advertising included direct links to pages illustrating the use of an HACST connector adapter to connect a Linksys or Cisco wireless access point to a device appearing to be an HSB1 or HSB2 amplifier and the use of an HACSA jumper cable to connect an Apple Airport wireless access point to a device appearing to be an HSB1 or HSB2 amplifier. Both of these illustrations also included language indicating that the connector adapters and jumper cables are for “[u]se with Hawking Hi-Gain Antenna or a Hawking Hi-Gain Range Extending Device.” The Bureau’s internet research further indicated that the HSB2 amplifier was listed on Hawking’s website under the category “Hi-Gain Wi-Fi Range Extending Products.”

12. Additionally, Hawking’s internet advertising for the HSB2 amplifier contained the following testimonial from a Hawking customer under the heading “What Others Are Saying About the Signal Booster”:

I’m now using one of Hawking’s signal boosters, a little box you attach to *any Wi-Fi router*<sup>25</sup> to, well, boost its signal. And since I installed it, my dead spot has disappeared entirely. I’m using the HSB1 model, which doesn’t seem to be on the market anymore, but the HSB2 (about \$85) is similar [emphasis added].

13. On June 26, 2006, the Bureau issued an LOI to Hawking.<sup>26</sup> Hawking responded to the LOI on July 11, 2006.<sup>27</sup> In its response, Hawking states that it imported 5,000 HSB2 units into the United States in July 2005, sold 4,566 units and halted importation of the HSB2 amplifier following receipt of the LOI.<sup>28</sup>

14. With respect to the notification requirements of Section 15.204(d)(2) of the Rules, Hawking asserts that it “checked all certification issues with the TCB<sup>29</sup> and was under the assumption that the packaging and users manual complied with all FCC regulations and rules.”<sup>30</sup> Additionally, Hawking claims that a specified page on its internet site contains “[t]he listing of wireless systems with which the HSB2 is authorized to be used ....”<sup>31</sup>

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<sup>25</sup> We take official notice that a “Wi-Fi router” is a wireless access point.

<sup>26</sup> Letter from Kathryn Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Hawking Technologies, Inc. (June 26, 2006).

<sup>27</sup> Letter from Frank Lin, Chief Executive Officer, Hawking Technologies, Inc. to Thomas Fitz-Gibbon, Attorney, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (July 11, 2006) (“LOI Response”).

<sup>28</sup> *Id.* at 3.

<sup>29</sup> A TCB (Telecommunication Certification Body) is a private entity that processes applications for equipment certifications. *See* 47 C.F.R. § 2.960.

<sup>30</sup> LOI Response at 1.

<sup>31</sup> LOI Response at 2.

15. The Bureau conducted follow-up research on July 13 and 18, 2006. The Bureau's observations on July 13, 2006 indicated that the internet page specified by Hawking did not contain a listing of wireless systems with which the HSB2 amplifier is authorized to be used. The Bureau's observations on July 18, 2006 indicated that Hawking is continuing to market the HSB2 amplifier on its website for individual sale.

### III. DISCUSSION

16. Under Section 503(b)(1)(b) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>32</sup> To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>33</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>34</sup> As set forth in detail below, we conclude under this standard that Hawking is apparently liable for forfeiture for its apparent willful and repeated violations of Sections 302(b) of the Act and Sections 2.803(a) and 15.204(d) of the Rules.

#### A. Illegal Marketing of External Radio Frequency Power Amplifiers for Individual Sale

17. We conclude that Hawking apparently violated Section 302(b) of the Act and Sections 2.803(a) and 15.204(d) of the Rules by willfully and repeatedly marketing external radio frequency power amplifiers in a manner that was inconsistent with the terms of Hawking's equipment authorization and the requirements of Section 15.204(d) of the Rules. As set forth above, under Section 15.204(d) of the Rules, an external radio frequency amplifier may be marketed for individual sale only for use with a transmission system or systems in which it has previously been authorized and must use a unique connector. Additionally, the packaging and user manual must include notification that the amplifier can only be used in a system in which it has obtained authorization. The HSB2 amplifier is authorized to be used as a system with the HWBA54G wireless access point under FCC ID # SOYHSB2AP. Since the HSB2 amplifier is apparently identical to the HSB1 amplifier, the HSB2 amplifier is also apparently authorized to be used as a system with the HWP54G PCI card.<sup>35</sup> Accordingly, the HSB2 amplifier may be marketed for individual sale only for use as a system with the HWBA54G wireless access point or the

<sup>32</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See, e.g., Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California*"). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc.*, 16 FCC Rcd 1359 (2001) ("*Callais Cablevision*") (issuing a notice of apparent liability for forfeiture for, *inter alia*, a cable television operator's repeated signal leakage). The term "repeated" means that the act was committed or omitted more than once, or lasts more than one day. *Callais Cablevision*, 16 FCC Rcd at 1362, ¶ 9; *Southern California*, 6 FCC Rcd at 4388, ¶ 5.

<sup>33</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>34</sup> *See, e.g., SBC Communications, Inc.*, 17 FCC Rcd 7589, 7591, ¶ 4 (2002).

<sup>35</sup> The equipment certification issued under FCC ID # SOYHSB1-PCI authorizes the HSB1 amplifier to be used with the HWP54G PCI card.

HWP54G PCI card. As detailed below, the record before us indicates that the HSB2 amplifier is being marketed as a device that can be connected to devices with which it is not authorized to be used.

18. The insert packaged with the HSB2 amplifier states that the HSB1 and HSB2 amplifiers “are identical in function and form.” The product brochure packaged with the HSB2 amplifier states that the HSB1 amplifier “attaches to any wireless device”<sup>36</sup> and provides instructions on how to use jumper cables (connector converters) to attach the HSB1 amplifier to any wireless device.<sup>37</sup> When read together, the insert and the product brochure clearly indicate that the HSB2 amplifier can be connected to any wireless device, including those with which it is not authorized to be used. In its response to the LOI, Hawking asserts that the insert was intended “to correct a factory mistake and in no way related to the outdated Hi-Gain 24 product brochure with the HSB2 that states the HSB1 attaches to any wireless device” and that the product brochure has now been updated.<sup>38</sup> This explanation is not acceptable. Hawking is responsible for marketing the HSB2 amplifier packaged with material indicating that it can be connected to “any wireless device.”

19. Furthermore, while Hawking packaged the HSB2 amplifier with a reverse SMA connector, Hawking effectively circumvented the unique connector requirement of Section 15.204(d)(1) by advertising connector adaptors for use with the HSB2 amplifier. Hawking advertised the HACST connector adapter which “makes any wireless networking device with TNC antenna connectors compatible with Hawking’s entire line of Hi-Gain WiFi Range Extending Products,” “converts any Wireless device with TNC connectors to SMA connectors for use with Hawking’s Hi-Gain Range Extending Antennas and Boosters,” and is “compatible with most Linksys and Cisco devices.” Hawking similarly advertised the HACSA jumper cable that “makes any Apple Airport with an external antenna connector compatible with Hawking’s entire line of Hi-Gain WiFi Range Extending Products.” In its response to the LOI, Hawking claims that this advertising was “an error in part by our website manager.” Specifically, Hawking contends that “[t]he entire line refers to Hawking’s entire line of passive antennas and not the HSB2 Signal Booster.” We find this explanation disingenuous. Hawking’s advertising specifically referred to Hawking “boosters”<sup>39</sup> as products that can be used with “any Wireless device with TNC connectors” when an HACST connector adapter is utilized. In addition, the HSB2 amplifier was listed on Hawking’s internet site under the category “Hi-Gain Wi-Fi Range Extending Products.”

20. Hawking’s internet advertising also included direct links to pages illustrating the use of an HACST connector adapter and an HACSA jumper cable to connect, respectively, a Linksys or Cisco wireless access point and an Apple Airport wireless access point, to devices appearing to be HSB1 or HSB2 amplifiers. In its response to the LOI, Hawking claims that the devices appearing in the illustrations to be HSB1 or HSB2 amplifiers are actually “a new (in development) passive antenna product that utilizes the same housing as the HSB1 and HSB2.”<sup>40</sup> We find this explanation altogether unconvincing. Both illustrations specifically include language indicating that the connector adapters and

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<sup>36</sup> Product brochure at 4.

<sup>37</sup> Product brochure at 7-8.

<sup>38</sup> LOI Response at 2.

<sup>39</sup> The term “booster” is not defined in the Rules. However, we take official notice that this term is commonly used to refer an external radio frequency power amplifier. Hawking describes the HSB2 amplifier as a “signal booster” in its internet advertising.

<sup>40</sup> LOI Response at 3.



jumper cables are for “[u]se with Hawking Hi-Gain Antenna *or* a Hawking Hi-Gain Range Extending Device” [emphasis added]. As noted above, the HSB2 amplifier was listed on Hawking’s internet site under the category “Hi-Gain Wi-Fi Range Extending Products.”

21. We note, moreover, that Hawking’s internet advertising for the HSB2 amplifier included a testimonial from a customer. This testimonial indicated that Hawking’s signal boosters can be attached to *any* Wi-Fi router to boost its signal.

22. Finally, neither the outside packaging of the HSB2 amplifier nor the user’s manual packaged with the HSB2 amplifier complies with the notification requirements of Section 15.204(d)(2) of the Rules. Hawking claims in its LOI response that it “checked all certification issues with the TCB and was under the assumption that the packaging and users manual complied to all FCC regulations and rules.”<sup>41</sup> However, as the certification holder, Hawking is responsible for ensuring its compliance with our rules. We note that the user’s manual packaged with the HSB2 amplifier does not contain any notification. Further, while the side of the box indicates that the HSB2 amplifier is certified to “work with various wireless devices as system,” this language does not provide clear notification that the HSB2 amplifier can be used *only* with devices with which it is authorized as a system. In addition, the side of the box states “Please check the Hawking Technologies website for the latest certifications.” Hawking claims in its LOI response that a specified page on its internet site contains the listing of wireless systems with which the HSB2 amplifier is authorized to be used. We note, however, that the webpage specified by Hawking did not contain such a listing. Similarly, while the back of the box states “Also works with other certified wireless network adapters and devices with removable antennas,” this language is inadequate to provide the requisite notification that the HSB2 amplifier can be used *only* with devices with which it is authorized as a system.

23. We find, on the basis of the substantial evidence discussed above, that Hawking apparently has marketed the HSB2 amplifier for individual sale as a product that can be connected to devices with which it is not authorized to be used. Accordingly, we conclude that Hawking apparently marketed the HSB2 amplifier in a manner that was inconsistent with the terms of its equipment authorization and the requirements of Section 15.204(d) of the Rules in apparent willful and repeated violation of Section 302(b) of the Act and Sections 2.803(a)(2) and 15.204(d) of the Rules.

## B. Proposed Forfeiture

24. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>42</sup> In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>43</sup>

25. Section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of a Notice of Apparent Liability.<sup>44</sup> Section

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<sup>41</sup> LOI Response at 1.

<sup>42</sup> 47 U.S.C. § 503(b).

<sup>43</sup> 47 U.S.C. § 503(b)(2)(E). *See also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

<sup>44</sup> 47 U.S.C. § 503(b)(6).

503(b)(6) does not, however, bar the Commission from assessing whether Hawking's conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.<sup>45</sup> Thus, while we may consider the fact that Hawking's conduct has continued over a period that began in July 2005, the forfeiture amount we propose herein relates only to Hawking's apparent violations that have occurred within the past year.

26. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement")<sup>46</sup> and Section 1.80 of the Rules,<sup>47</sup> the base forfeiture amount for the importation or marketing of unauthorized or non-compliant equipment is \$7,000. Section 503(b)(2)(D) of the Act authorizes the Commission to assess a maximum forfeiture of \$11,000 for each violation, or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation.<sup>48</sup>

27. Based on the record before us, and having considered the statutory factors enumerated above, we conclude that a substantial upward adjustment of the \$7,000 base forfeiture amount is warranted. First, we are troubled that Hawking apparently continues to violate the rules regarding the marketing of external radio frequency power amplifiers. In this regard, as noted above, the Bureau previously issued a \$17,600 forfeiture to Hawking for marketing external radio frequency power amplifiers for individual sale in a manner that was inconsistent with the terms of its equipment authorization and the Commission's Rules.<sup>49</sup> Hawking did not dispute those prior violations and in fact paid the forfeiture.<sup>50</sup> The Bureau's prior enforcement action put Hawking on notice that these requirements must be taken seriously, yet Hawking apparently failed to take adequate steps to ensure its future compliance in this area. We believe that Hawking's repetition of its prior violations evinces a pattern of noncompliance and disregard for the Commission's rules which warrants a substantial upward

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<sup>45</sup> See 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.* 21 FCC Rcd 1820, 1827, ¶ 20 (2006), *response pending*; *Globcom, Inc. d/b/a Globcom Global Communications*, 18 FCC Rcd 19893, 19903 ¶ 23 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, 15 FCC Rcd 9669, 9671-71 ¶ 8 (2000); *Cate Communications Corp.*, 60 RR 2d 1386, 1388 ¶ 7 (1986); *Eastern Broadcasting Corp.*, 10 FCC 2d 37, 37-38 ¶ 3 (1967), *recon. den.*, 11 FCC 2d 193 (1967); *Bureau D'Electronique Appliquee, Inc.*, 20 FCC Rcd 3445, 3447-48 ¶¶ 8-9 (Enf. Bur., Spectrum Enf. Div., 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div., 2005) ("*Bureau D'Electronique Appliquee*").

<sup>46</sup> 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>47</sup> 47 C.F.R. § 1.80.

<sup>48</sup> 47 U.S.C. § 503(b)(2)(E). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$10,000/\$75,000 to \$11,000/\$87,500); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$11,000/\$87,500 to \$11,000/\$97,500); see also 47 C.F.R. § 1.80(c).

<sup>49</sup> *Hawking*, 21 FCC Rcd at 3971.

<sup>50</sup> As noted above, Commission records indicate that Hawking paid the \$17,600 forfeiture in full on May 25, 2006.

adjustment of the base forfeiture amount.<sup>51</sup> We also believe that an upward adjustment is warranted in view of the substantial number of HSB2 amplifiers that Hawking imported and sold and the fact that the violations continued over a 12-month period.<sup>52</sup> Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that Hawking is apparently liable for a \$50,000 forfeiture.

#### IV. ORDERING CLAUSES

28. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act<sup>53</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>54</sup> Hawking Technologies, Inc., **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifty thousand dollars (\$50,000) for willfully and repeatedly violating Section 302(b) of the Act and Sections 2.803(a) and 15.204(d) of the Rules.

29. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*, Hawking Technologies, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

30. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

31. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

32. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

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<sup>51</sup> See e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891, 7896, ¶¶ 19-20, *forfeiture ordered*, 17 FCC Rcd 21866 (2002) (tripling the aggregate base forfeiture amount based on the licensee's continued violations following prior monetary forfeiture).

<sup>52</sup> See, e.g., *San Jose Navigation, Inc.*, 21 FCC Rcd 2873, 2877-8, ¶ 15 (2006) (upwardly adjusting a proposed forfeiture based on the volume of non-compliant devices distributed, and the three-year span in which such devices were marketed), *forfeiture ordered*, 22 FCC Rcd 1040 (2007), *recon. pending*; *Bureau D'Electronique Appliquee*, 20 FCC Rcd at 3448, ¶ 9 (upwardly adjusting a proposed forfeiture based on the volume of unauthorized devices distributed, and the five-year span in which such devices were marketed).

<sup>53</sup> 47 U.S.C. § 503(b).

<sup>54</sup> 47 C.F.R. § 0.111, 0.311 and 1.80.

33. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>55</sup>

34. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Hawking Technologies, Inc., 15281 A Barranca Pkwy., Irvine, CA 92618.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>55</sup> See 47 C.F.R. § 1.1914.